purchase requirements. The Act is applicable when a lien is taken as security for a loan transaction on improved real estate or a mobile home. Under the new law, lenders' responsibilities include the following actions:

- Determine whether the structure offered as security for a loan is, or will be, located in an SFHA;
- Document the determination of flood hazard status;
- Require that flood insurance to the appropriate limit is obtained when necessary; and
- During the term of the loan, ensure that flood insurance is maintained or added if the lender becomes aware that the property involved subsequently becomes part of an SFHA.

While the mandatory purchase requirement applies only to properties located in SFHAs of participating communities, NFIP flood insurance is available in all areas of participating communities. This is especially significant because, historically, one-third of the NFIP claims paid have actually been outside of SFHAs. Lenders and property owners may wish to exercise additional caution in areas subject to flooding due to storm water, in areas where the NFIP has used approximate methods to map flood hazard areas, or in remote locations where no flood hazard areas have been designated by FEMA. In January 1989, to facilitate the purchase of flood insurance outside of SFHAs, the NFIP began offering a low-cost "preferred risk" policy for structures located in Zones B, C, and X.

Some properties in a participating community may be ineligible for flood insurance because of statutory restrictions or NFIP underwriting rules. See Section B.2.d for a discussion of the consequences of the unavailability of flood insurance in such instances.

As detailed later in these guidelines, the 1994 legislation's mandatory purchase requirement applies to any loan made, increased, extended, or renewed since September 23, 1994. The Conference Committee, in its report on the legislation, states its view that the making, increasing, extending, or renewing of a loan serves as a "tripwire" of sorts for compliance with the flood insurance purchase requirements. In the modern mortgage marketplace, this approach makes compliance by lenders increasingly more likely, as borrowers obtain new loans on existing structures or refinance existing loans. At each designated "tripwire" in the mortgage process, the legislative intent is for a lender or servicer to ensure that flood insurance is purchased and maintained.

As stated in the Supplementary Information section of the final regulation, a requirement for flood insurance on secured property that is not subject to the Federal flood insurance statutes is a matter of contract between the lender and borrower.

B. COVERAGE AVAILABILITY

1. Participating Communities

a. Community Ordinances

FEMA conducts studies throughout the United States to determine the location of Special Flood Hazard Areas (SFHAs) in each community. Based on these studies, FEMA issues Flood Hazard Boundary Maps (FHBMs) and Flood Insurance Rate Maps (FIRMs) showing the location of these areas and notifies each community of the determination.

Following notification, if a community decides to participate in the NFIP, it enters

into an agreement with FEMA. The community adopts and enforces ordinances conceived to reduce the vulnerability of property in that community to the peril of flooding. The ordinances restrict or limit imprudent building within floodplain areas. In return for this participation, most owners of residential and commercial property in a community become eligible to purchase NFIP flood insurance for their buildings.

The most significant of these required ordinances are those which, for example, allow building permits for new residential construction in SFHAs only for buildings to be constructed so that the lowest floor will be located above the base flood elevation (BFE), if that figure is provided on a FIRM issued by FEMA/FIA. Among other things, community floodplain management ordinances generally require the lowest floor of newly constructed or substantially improved residential buildings to be elevated to or above the BFE. Nonresidential buildings can be either elevated or floodproofed (made watertight) to that elevation.

Participating communities that fail to adequately enforce their floodplain management ordinances may be placed on probation if they do not take corrective actions within a specified time. NFIP policyholders in that community will be notified that probation is pending and that their policies may become subject to a surcharge on their flood insurance premiums. If a community fails to bring its floodplain management program into compliance with the NFIP requirements, it may be suspended from the NFIP, which would terminate its status as a participating community. In that event, NFIP policies would not be renewed for property owners in that community, no new policies would be issued, and Federal disaster assistance would be limited.

Most suspended communities quickly enforce the ordinances and become participating again. The success of the NFIP's growth can be credited in part to the incentive that promotes the receipt of Federal benefits contingent upon the implementation of land use controls at the local level.

The NFIP also has special provisions for those communities whose floodplain management activities go beyond the minimum required by law. The Community Rating System (CRS), codified in the 1994 Reform Act, provides incentives in the form of reduced insurance premiums to communities that voluntarily adopt and enforce measures exceeding current program criteria to reduce the risk of flood damage.

b. Studies and Maps

More than 18,800 communities susceptible to flooding have been identified through the publication of flood maps by FEMA. Over 95 percent of these communities participate in the NFIP. Property owners throughout the participating communities are eligible to purchase the maximum amount of flood insurance available under the Program to protect buildings located anywhere within such communities, both inside and outside of SFHAs (subject to other restrictions discussed below). Relatively few communities with the potential for flooding do not presently participate. A small percentage of communities are currently "suspended" from the program.

A few participating communities remain in the Emergency Program phase, where only limited amounts of insurance are available. The applicable map for these communities is the FHBM. Once a FIRM has been developed and issued, it replaces the FHBM. At that time, these communities are eligible for conversion to the Regular Program phase

and, therefore, eligible for higher amounts of insurance coverage.

The official FIRM for a Regular Program community delineates the SFHAs and the applicable risk premium zones. SFHAs are those areas within the floodplain that have a 1-percent chance of being flooded in any given year (100-year floodplain). While it is necessary in applying floodplain management requirements and establishing uniform flood insurance rates, the term 100-year flood can be misleading. Since the NFIP was established, many communities have sustained two or three 100-year or greater floods within a several-year period. A notable example took place in the 1970's when, within 5 years after experiencing Tropical Storm Agnes in 1972, Pennsylvania was battered by another 100-year flood. A more recent example occurred in the Midwest in 1993 and 1995, when there were two substantial flooding events within as many years. These examples demonstrate the value of the standard as a tool for measuring exposure to a 100-year flood, but not for predicting its timing. The 100-year flood might be more properly termed the "1-percent annual chance flood," which represents its true probability of being equaled or exceeded in any year. Over a 30-year period (the life of most mortgages), there is at least a 26-percent chance that an SFHA will be flooded.

SFHAs are represented on flood maps by darkly shaded areas designated with the letter A or V. FEMA uses engineering studies to determine the delineation of these areas or zones subject to flooding. SFHAs are defined in the regulations at 44 CFR §59.1 as Zones A, AO, A1-30, AE, AR, AR/AO, AR/A1-30, AR/AE, AR/AH, AR/A99, A99, AH, VO, V1-30, VE, V, M, or E. The A-lettered areas are susceptible to flooding, while the V-lettered areas are also subject to wave velocity associated with storm waves or wave action. Older maps utilize numbered A Zones (e.g., A1, A2, A30) and numbered V Zones (e.g., V1, V2, V30) in lieu of the newer AE and VE Zones. New maps use fewer zone designations for purposes of simplicity. The temporarily designated AR Zone is subject to the mandatory purchase requirement.

The term SFHA does not include areas outside the 100-year floodplain, which are referred to as moderate to minimal risk and are designated Zone X. Older maps differentiate the X Zone into Zones B and C, which represent moderate and minimal flood risks, respectively. Areas for which FEMA has made no flood hazard evaluation are designated as Zone D.

Finally, certain communities with no SFHAs indicated do not have maps published, and the entire area is considered a C Zone (currently designated as an X zone). Although these areas may not be subject to the 100-year flood, local drainage problems may cause damage to certain structures. If a lender extends a loan in an unmapped participating community and has reason to believe there is a possibility of flood loss to the secured property, then safety and soundness dictate that flood coverage should be in place.

For properties located outside the SFHAs, and whose zone designations are B, C, X, or D, the Act does not require lenders to impose the flood insurance purchase requirement. However, in accordance with most mortgage documents' hazard insurance provision, a mortgage lender is free to require a borrower to carry flood insurance, even if the building serving as security for a loan is located outside an SFHA. Flood insurance is available for all eligible buildings, whether inside or outside an SFHA.

c. Map Issues

Map issues arise frequently, since the location of a building with respect to a floodprone area is central to determining the applicability of the mandatory purchase provision, as well as the insurance premium rate. In theory, the area on a map in which a building is located should reflect its susceptibility to flood; yet, in practice, flood insurance maps cannot reflect every nuance in the physical geography of an area. This section will review some of the most frequently encountered map issues, including:

- Letter of Map Amendment (LOMA)
- Letter of Map Revision (LOMR)
- Community Remapping
- Map Availability

(1) Letter of Map Amendment (LOMA)

Occasionally, a flood map will show property as clearly being in an SFHA, even though the building on the property is actually above the BFE. In practice, flood insurance maps cannot possibly reflect every rise in terrain, and there will be instances of "natural islands" of high ground that are inadvertently included in the SFHAs. Nevertheless, until the map is changed, lenders are bound by the information shown on FEMA maps unless a valid Letter of Map Amendment (LOMA) or Letter of Map Revision (LOMR) exists for the property.

However, a mechanism is available for resolving such a situation. A property owner can submit elevation materials in support of a request for a LOMA removing the property from the SFHA. This process involves the property owner and FEMA.

(2) Letter of Map Revision (LOMR)

A different, but related, situation is presented when a property owner, whose land is within an SFHA below the base flood elevation (BFE), grades and fills the site to raise the level of the land above the BFE 100-year flood level. In the LOMA situation described previously, the natural level of the land at the time the map was issued was above the BFE (100-year flood level), and no artificial improvement was needed to accomplish that level. In cases where physical changes were necessary to raise the property above the BFE, FEMA will not issue a LOMA. However, with the community's concurrence, FEMA will issue a Letter of Map Revision (LOMR) that, for the purposes of the property owner, will accomplish the same objective. A LOMR can also be used to correct a mistake made in the original analysis or to reflect changed conditions, such as the construction or removal of a dam or other flood control structure.

The request for a LOMR must be initiated or approved by the community, because changes in land level may impact other property owners. Submission of a request for a LOMR by the community also confirms that the community has reviewed the change in land level and found it compatible with the community's planning. LOMRs may also be granted in situations where channels have been dug or reservoirs built to reduce BFEs and where levees or floodwalls have been constructed to protect areas. In floodways of SFHAs, which include the channel of a river and the adjacent floodplain that must be kept unobstructed, the placing of fill or other development is not allowed if it will result in any increase in the flood level for the SFHA.

A unique situation arises when a building is initially constructed at a level below the 100-year flood level (the BFE) in an SFHA, and its lowest floor is subsequently elevated or raised above the BFE by supporting walls or pilings. Such a structure is then considered an elevated building by the NFIP.

In this situation, there is no basis for the issuance of either a map amendment (LOMA) or map revision (LOMR). The building is still in the designated SFHA, and its foundation can come into direct contact with flood waters. When an owner of property below the 100-year flood level elevates a building so that the lowest floor is above the 100-year flood level, the flood insurance purchase requirement continues to apply. Insurance is required because the foundation on which the house is elevated is still below the BFE in the SFHA, where it remains exposed to the action of floodwaters. However, because of its reduced exposure to damage, the newly elevated building will be subject to a lower insurance rate and premium.

Only FEMA can amend an official map to remove a property location from an SFHA, add it to a designated SFHA by a LOMA, revise a map by a LOMR, change the SFHA designation, or revise the elevations on a map. Until a property owner has received a LOMA or LOMR removing the improved real property from the SFHA, information contained in FHBMs and FIRMs is reliable. Questions concerning the correctness of the map or the proper designation of a structure in accordance with a LOMA or LOMR are matters beyond the authority of the lender.

After obtaining a LOMA or LOMR, the policyholder may submit the letter to the lender, and the property will be released from the statutory obligation to be covered by flood insurance. However, even though lenders are not required to compel the purchase of flood insurance on improved real property subject to a LOMA or LOMR, they have the discretionary right to continue to require flood insurance in accordance with their lending documents. For this reason, owners who are considering seeking a LOMA or LOMR should first consult their lending institutions to determine if flood insurance will still be required. Further, lenders are encouraged to advise LOMA and LOMR recipients that floods more severe than the 100-year flood do occur and that they should consider the Preferred Risk Policy.

(3) Community Remapping

A physical map revision is an official republication of a map to effect changes to flood insurance zones, floodplain delineations, flood elevations, floodways, and other mapping and boundary features within a community. These changes typically occur as a result of structural works or improvements, annexations resulting in additional flood hazard areas, or corrections of BFEs or flood insurance risk zones. The Director of FEMA is required to assess the need to update flood maps every 5 years. A notice of any change in flood map panels will be published in the Federal Register.

(4) Map Availability

Under the Reform Act of 1994, FEMA has specific responsibilities for making flood map information available, including the following:

- FEMA must make FIRMs and related information dealing with the various changes discussed above available free of charge to the Federal entities for

lending regulation (Federal lenders and certain other governmental entities), and at a reasonable cost to all other persons. The maps and other NFIP publications are available through FEMA's Map Service Center, which can be contacted on 1-800-358-9616. (See Appendix 5 for additional resources.)

- FEMA also must provide notice of any change to flood insurance map panels, including changes effected by LOMA or LOMR, not later than 30 days after the map change or revision becomes effective. FEMA must either publish this notice in the Federal Register or provide notice by another comparable method.

- Finally, every 6 months, FEMA must publish a compendium of all changes and revisions to flood insurance map panels and all LOMAs and LOMRs published during the preceding 6 months. The compendia will show the various changes in which some areas are removed from the SFHA while others are included. These compendia are made part of the public record as published in the Federal Register. A lender should review its loans located within the geographic area(s) impacted by the changes noted in the compendium. If a lender becomes aware that any properties on which it has loans are brought within an SFHA, the mandatory purchase requirements must be met.

d. Determining Location of a Structure

(1) Significance of Structure's Location

As stated earlier, the mandatory flood insurance purchase requirements of the Act apply only where there is a loan extended on improved real property, i.e., a structure or mobile home, that is located in an SFHA in a participating community. The requirement is accomplished by documenting the Standard Flood Hazard Determination Form (SFHDF) as discussed in Section C.2.e of these guidelines. If the improved real estate or mobile home is located in a participating community, but not in an "area of special flood hazard," flood insurance is not required, but is available and encouraged.

Even though a portion of real property on which a structure is located may lie within an SFHA, the purchase and notice requirements of the Act do not apply unless the structure itself, or some part of the structure, is in the SFHA. If that part of the structure within the SFHA is not subject to coverage, e.g., a deck, the entire building is not considered to be in the SFHA.

Lenders, on their own initiative, may require the purchase of flood insurance even if a structure is located outside the SFHA. A decision to require coverage under such circumstances is not compelled by the statute, but is founded on the contractual relationship between the parties. Lenders have the prerogative to require flood insurance to protect their investments, provided that they have reserved that option in their mortgage loan document.

(2) Responsibility in Determining Structure's Location

The Act sets the ultimate responsibility to place flood insurance on the applicable lender, yet allows for limited reliance on third parties to the extent the information they provide is guaranteed. The lender, servicer, or a third-party vendor may conduct the determination. Under any alternative, the lender, using such evidence as is reasonable, must take the

responsibility for making determinations and redeterminations. A financial institution cannot rely on the statements of a borrower that the property in question is either inside or outside of an SFHA.

Lenders may reasonably seek assistance from third parties that have demonstrated their knowledge concerning flood map information. For regulatory purposes, reasonable reliance upon such services in the making of a lender's determination is regarded as acceptable only to the extent "such person guarantees the accuracy of the information," as provided under the statute at 42 U.S.C. §4104b(d).

Some third-party flood zone determination companies also provide a form of life-of-loan service that monitors the flood hazard status of the secured property for the term of the loan. Third-party life-of-loan service is designed to discover a change in flood hazard status, thereby minimizing administrative burden for the lender or servicer. The law does not require a lender to subscribe to a tracking service that provides life-of-loan monitoring.

A lender is free to perform the determination in-house, utilizing whatever sources are available to obtain the information. In many instances, community officials, insurance company personnel, insurance agents, realtors, surveyors, or appraisers may be helpful and knowledgeable resources. However, due to the extent that such parties cannot, or will not, grant guarantees, reliance upon the information they provide cannot be used for exculpatory purposes if the lender is confronted with a regulatory violation or a civil claim for damages. Regardless of how the determination is reached, the non-delegable obligation of the determination remains the responsibility of the lender.

A lender may rely on a previous determination, not more than 7 years old, when increasing, extending, renewing, or purchasing a loan, only when the previous determination was recorded on a designated SFHDF as mandated by the Reform Act. This rule does not apply when a new loan is made, or if a map revision causes a property to be located within an SFHA, or if a map change occurs after the date of the previous determination.

The Act places the regulatory onus on the Federal financial regulatory agencies and GSEs to ensure that the entities under their jurisdiction require the borrowers to meet these requirements and, if coverage is mandated, to require its purchase.

(3) Flood Determination Fee Charged by Lender

The 1994 Reform Act gives a lender or servicer authority to pass on a "reasonable fee" to borrowers when a determination is made in conjunction with, among other things, the:

- Making, increasing, extending, or renewing of a loan initiated by the borrower
- Revision or updating of a map
- Required "force placement" of coverage.

Passing along fees to the borrower is not allowed on a routine portfolio review unless the review results in discovery of a loan for which coverage is specifically required. When the flood map is revised, or in a special situation when the Director

of FEMA determines that an area requires a review, a lender is permitted to conduct a search on its loan portfolio in the affected area and pass through the flood determination fee to all borrowers involved. The pass-through is permitted whether or not it is ultimately shown that coverage is necessary or already in existence on any of the affected properties. When a search is conducted because of a map change, a reasonable fee may be charged for that service whether the flood hazard determination is positive or negative. The Reform Act does not distinguish between determinations done in-house by a lender or performed by a flood zone determination company. Accordingly, a lender or servicer is entitled to charge a determination fee in either case.

The commentary that accompanied the regulations states that the determination fee may include the life-of-loan charge assessed to monitor the loan for its term. The regulations do not specifically define what constitutes reasonableness in evaluating the fee. Also unspecified is whether incidental expenses, cost, or profit margin may be factored into the fee. The amount of the fee remains subject to review on a case-by-case basis by the applicable regulator.

Where an extension of credit is secured by an interest in real property, the Truth in Lending Act and its implementing regulation, Regulation Z, specifically provide that certain costs and fees, if bona fide and reasonable in amount, need to be *disclosed*, but need not be included in the calculation of the finance charge. The Truth in Lending statute provides that a flood zone determination charge is excludable as a finance charge only if it is imposed in connection with the initial decision to grant credit. Therefore, a flood zone search fee that does not contain a charge for life-of-loan monitoring need not be included as part of the finance charge. The fee charged for the initial determination must appear on the HUD Good Faith Estimate, and the actual fee must be disclosed on the HUD-1 Settlement statement.

The Truth in Lending law also requires that a fee for services to be performed periodically during the loan term (for example, the life-of-loan component that is charged to monitor continued compliance) may not be excluded in the calculation of the finance charge regardless of when paid. If a consolidated flood determination fee includes a life-of-loan aspect, which cannot be apportioned between an initial credit decision or future services, the entire charge is to be considered a finance charge. If a lender is uncertain about what portion of a fee is related to the initial decision to grant credit, the entire fee may be treated as a finance charge.

Regulation Z does not come into play if a lender incurs flood zone determination expenses subsequent to the closing of the loan, such as expenses arising from a remapping or the transfer of a fee to the borrower. This is because the lender did not know at the time of the closing whether a determination would be needed.

Section 4012a(h) also contains an express provision that preempts other Federal or State law with respect to flood determination fees charged by lenders.

e. FEMA's Review of Determinations

(1) Contested Determinations

In order to determine whether a structure is located in an SFHA, it is necessary to examine the location of the structure in relationship to the

SFHAs shown on the FHBM or FIRM. However, despite FEMA's efforts to make the maps as useful as possible, the boundary location of some SFHAs may be difficult to determine precisely. This creates a problem in deciding whether a structure on property that is the security for a loan is subject to the mandatory purchase requirement.

To a limited extent, Congress recognized this problem in the 1994 Reform Act. The new law allows for a review process when the question of a structure's location arises. Essentially, the law authorizes lenders to insist upon flood insurance protection in conjunction with the loan. Occasionally, a borrower may contest the need for this insurance by contending that the property is not located within an SFHA. After the lender conducts or obtains a determination using the current printed map panel, FEMA will review the determination upon request if the request meets the stipulated criteria. The review provides a forum for borrowers and lenders to resolve disputes regarding contested determinations. This procedure is intended to confirm or disprove the accuracy of the original determination. It is not intended to result in the initiation of the LOMA/LOMR process or resolve questions concerning the elevation of a structure. The review procedure is found at 42 U.S.C. §4012a(e)(3) of the law, with the regulations located at 44 CFR §65.17.

(2) Request for a Review

(a) Initiation Procedures

A borrower and a lender can jointly submit a review request during the 45-day period after the borrower is notified that flood insurance is required. Requests submitted more than 45 days after borrower notification will not be reviewed, will be returned with the fee, and cannot be resubmitted.

In addition, when a lender proposes to force place flood insurance on behalf of a borrower, the borrower can dispute the lender's decision by requesting the Director of FEMA to review whether the structure is subject to the mandatory purchase requirement.

FEMA will assess a flat fee to cover a majority of the costs associated with reviewing, recording, processing, and dispatching FEMA determinations. The fee will also apply to a finding of insufficient information. Since the fee is not imposed or required by the lender, it is not required to be included in the finance charge pursuant to Regulation Z, 12 CFR, part 226. The lender and borrower must decide who will pay the fee. Payment must be by check or money order, payable to the National Flood Insurance Program. The fee will be reviewed annually and will be changed, if necessary, by publishing a notice in the Federal Register.

Review requests should be mailed to the following locations:

- For Minnesota and locations east of the Mississippi River:

  Determination Review Coordinator
  c/o Dewberry & Davis
  P.O. Box 2020
  Merrifield, VA 22116-2020

- For Louisiana and locations west of the Mississippi River:

  Determination Review Coordinator
  c/o Michael Baker, Jr., Inc.
  3601 Eisenhower Avenue
  Alexandria, VA 22304

The request for a determination review must be an original (not photocopied) and signed by at least one of the borrowers' legal representatives for the loan. The lender must also sign the request. To ensure the involvement of all appropriate parties, FEMA will not accept the signature of a third-party determinator as a representative for either the borrower or the lender. If an individual request for a determination review is submitted, FEMA will make a reasonable attempt to obtain the needed signature. However, if both parties' signatures are not ultimately included in the request, the request will be returned without review. The requestor will be notified that the data submitted with the request does not meet the requirements of §65.17 of the regulations; therefore, the lender's obligation to require the purchase of flood insurance remains in effect.

If the issue is whether the NFIP map was read correctly, the determination review procedure is appropriate. If the issue is whether the map should be changed, LOMA or LOMR procedures are appropriate. If the determination review process indicates that the structure is in the SFHA, the requestor of the determination review will be notified that other procedures are available to individuals under Parts 70 and 65 of the NFIP regulations, i.e., the LOMA and LOMR processes.

(b) Supporting Materials

The determination review procedure requires the parties to present technical information to the Director of FEMA for review. This information includes the completed Standard Flood Hazard Determination Form (SFHDF) (see Appendix 6), copy of the lender's notification to the borrower, applicable map panel, and all other technical information used in making the flood hazard determination. A copy of the NFIP map used to make the determination should be provided, to assess whether the most current map panel was used. If the submitted data do not include all relevant information, the request for review will be returned. The title block, including map date, scale bar, and north arrow, and the portion of the map including the property location (with that property location annotated) are the only portions of the NFIP map that need to be provided. FEMA will return requests if the required documentation is not provided.

The request must include the same technical data used by the lender or third-party flood zone determination company to make the determination. Items to complete this requirement typically include a copy of the tax assessor's map showing the property, a property survey map showing the location of the structure as related to the property, a copy of the plat for the subdivision/tract or similar

document, and information showing the relationship of the NFIP map and the property. Structures located in rural areas, or areas where the NFIP map shows few physical features, may need additional reference data to definitively locate the property and the structure on the property. Multiple-unit structures need data for all of the building(s) located within the same SFHA. Properties with multiple buildings must show data for all structures. A building porch or deck should be indicated in detail.

(3) FEMA's Review

After receiving the request and required supporting technical information, FEMA will conduct a review and issue a written determination concurring or disagreeing with the original determination, and stating whether the NFIP map indicates the subject building or mobile home is in the SFHA.

In conducting the review, FEMA will check its Community Information System database for LOMAs and LOMRs that would affect the determination. If the original determination overlooked a LOMA or LOMR, FEMA's final response will so state and will provide the date of the letter. LOMAs and LOMRs are available through the community's map repository.

The law states that FEMA shall respond to review requests within 45 days on disputes arising out of loan originations. The 45-day time period begins on the day that the package is received by FEMA. Delay may be minimized if a request for review is submitted immediately after the borrower is notified by the lender that flood insurance is required, and if a complete data package is submitted to FEMA. Packages with insufficient information will be returned with the fee, and the parties will be advised of the information needed for the review to be accomplished. The borrower will have 14 days to resubmit the package with the fee or until the end of the original 45 days, whichever is longer. There is no second charge.

A structure found to be in an SFHA is required to have flood insurance coverage. However, if the Director fails to respond to the review request before the later of 45 days after receipt, or the closing of the loan, then there is no obligation for flood insurance coverage until the Director provides a determination. Apart from the law, it is industry practice for a lender to contractually require the prospective borrower to obtain flood coverage as a condition of granting the loan. If FEMA subsequently determines that flood insurance coverage is not required, there is an NFIP procedure that allows cancellation with refund of premium for the current policy term.

In addition, the Director will entertain contested determinations dealing with remapping, map revision, or a routine portfolio review. The law does not require the agency to respond to these

inquiries within the 45-day time period.

Any determination that the structure is not subject to the mandatory purchase requirement can be relied upon for the time period specified by the Director of FEMA in the review decision. The length of time specified reflects the likelihood that the area in question may be scheduled for imminent remapping. Thus, the effective duration of a letter pertaining to an area that has recently been remapped will be substantially longer than the duration pertaining to an area scheduled to be remapped in the near future. The statute states that a determination of the Director shall be final. A lender or servicer may now rely on a letter of determination review issued by the Director of FEMA stating whether or not the building or mobile home is in an SFHA.

2. Nonparticipating Communities and Restricted Coverage Areas

a. Regulated Lending Permitted

Under the Reform Act of 1994, conventional loans can be made in communities that are not participating in the NFIP.

The 1973 amendment to the Act, which first introduced the mandatory purchase provision, totally prohibited federally related financing by private lending institutions, as well as SBA, VA, and FHA loans in nonparticipating areas. This law met with some resistance, which resulted in a further 1977 amendment deleting this prohibition for regulated lenders. The 1977 law substituted a notice requirement in lieu of the prohibition on lending. That notice appears as part of the Notice to Borrower form (Notice of Special Flood Hazard and Availability of Federal Disaster Relief Assistance) (see B.2.c).

Consequently, lenders regulated by, or whose deposits are insured by, Federal entities for lending regulation may now make conventional loans secured by mortgages on improved real property and mobile homes in SFHAs in nonparticipating communities. They may do so notwithstanding the fact that such property is not eligible for the purchase of national flood insurance. Lenders are still required to observe the mandatory purchase law and regulations related to making determinations and providing notice, even though the requirement to purchase flood coverage does not apply. However, because of the lack of NFIP coverage and limited Federal disaster assistance, lenders should carefully evaluate the underwriting risk involved in making such loans. In nonparticipating communities, a lender may require the borrower to have in place private flood insurance, if available.

In those communities where the availability of flood insurance is limited, the inability of the property owner to purchase NFIP coverage does not prevent a lender from making a conventional loan with respect to that property. The statute mandates coverage only when "the sale of flood insurance has been made available," 42 U.S.C. §4012a(b). As stated in the Supplementary Information section of the final regulations, a lender may exercise discretion and decline to make a loan in an SFHA where Federal flood insurance is not available. Also, lenders with significant lending in nonparticipating communities should establish procedures to ensure that loans on properties in flood hazard areas where flood insurance is not available do not constitute an unacceptably large portion of the institution's loan portfolio.

Although a conventional loan may be extended in a nonparticipating community, a

lender may not be able to pass such a loan on to a regulated lending institution or to the secondary market. Some GSEs, such as Fannie Mae and Freddie Mac, have restated they will not buy mortgages secured by properties in nonparticipating communities if they are located in an SFHA. In order to ensure that such loans are not delivered to them, Fannie Mae and Freddie Mac now require lenders to monitor, on an ongoing basis, changes in a community's status under the NFIP.

b. Federal Financial Assistance and Disaster Assistance Limited

Section 42 U.S.C. 4106(a) addresses the responsibility of Federal officers and agencies dealing with Federal financial assistance in SFHAs in nonparticipating communities where flood insurance is not available. To prevent the Federal Government's financially exposure to potential loss from flood damage to uninsured buildings located in these areas, Federal officers and agencies are specifically prohibited from providing financial assistance for acquisition or construction purposes for use in SFHAs in nonparticipating communities.

Without eligibility for Government-supported VA or FHA loans associated with the purchase of housing, the sale of homes is affected. Nonparticipating community residents and developers are ineligible to obtain direct Federal loans to build structures within the floodplain. By virtue of the 1977 amendment to the Flood Disaster Protection Act, however, they remain eligible for conventional loans from federally insured banks.

The 1994 Reform Act limits Federal disaster assistance in participating as well as nonparticipating communities. Section 5154a(a) of Title 42, which is part of the Stafford Act, places limits on disaster assistance benefits. The law precludes certain Federal disaster assistance related to repair of property, including loan assistance payments, if previously received flood disaster assistance was conditioned on carrying flood insurance.

c. Notification of the Unavailability of Disaster Assistance

The 1977 amendment to the Act created a notice requirement under which a regulated lender, when lending on a secured improved real estate loan in a nonparticipating community, must notify the borrower of the unavailability of disaster relief assistance in the event of a disaster caused by flood. The notice requirement does not apply to unsecured loans, or to loans secured by improved real property that is not located in an SFHA. While the 1977 amendment removed the prohibition against making conventional loans in nonparticipating communities, the "notice" provision, found at §4106(b) of the Act (see Appendix 4), requires affected lenders to notify borrowers whether Federal disaster relief will be available to the property. For the convenience of lenders, FEMA has incorporated that notification into the lender notice form.

d. Structures Ineligible for NFIP Coverage

The following categories of properties are located in participating communities, but coverage is restricted. In these special situations, Congress or FEMA has chosen to deny eligibility for flood insurance, treating the structures similarly to risks in non-participating communities.

(1) Coastal Barrier Resources Act

The Coastal Barrier Resources Act (COBRA), 16 USCA Sec. 3501, was initially enacted by Congress in 1982 to

reduce or restrict Federal Government actions that were believed to encourage development in certain undeveloped coastal barrier areas, including both islands and mainland property. While COBRA does not prevent private financing and development, it does limit financial assistance by Federal agencies on undeveloped coastal barriers, except for enumerated situations such as assistance for emergency actions essential to saving lives, protecting property, and preserving public health and safety. Any form of expenditure of federal funds for a loan, grant, guarantee, insurance payment, rebate, subsidy, or any other form of direct or indirect Federal assistance is prohibited. Such emergency assistance would not include disaster assistance and government loans.

COBRA, which also added §4028 to the Flood Act, prohibits the NFIP from providing flood insurance protection for structures built, or substantially improved, after the area has been designated as an undeveloped coastal barrier area.

Buildings already located in the designated areas and walled or roofed prior to the designation remain eligible for coverage. If a building built in a designated area prior to it being designated sustains substantial damage as a result of a fire, hurricane, or other causes, the restored structure is not eligible for flood insurance coverage.

Lenders are required to notify borrowers that the property is in an SFHA. However, the unavailability of flood insurance does not prevent the making of a conventional loan. As with loans in nonparticipating areas, the lender would be well advised to assess the flood risk at the site in deciding whether to grant the loan.

(2) Structures in Violation of State or Local Laws

In accordance with Section 1316 (42 U.S.C. 4023) of the Act, a conventional loan can be made when the building is located in an SFHA of a participating community, but is not eligible for flood insurance protection because it has been declared to be in violation of local floodplain management building codes. Nevertheless, compliance with the provision notifying the borrower that the building is in an SFHA would be especially important. Because of violations relating to protection against flooding, properties that come under the provisions of Section 1316 will usually be highly susceptible to flood damages, and are a far greater risk to the lender than structures compliant with floodplain management ordinances.

With respect to both COBRA and 1316 properties, the lack of available NFIP coverage in a participating community does not prohibit a lender from making a conventional loan. The statute mandates coverage only when "the sale of flood insurance has been made available," 42 U.S.C. §4012a(b).

(3) Underwriting Restrictions

Some policy provisions and underwriting rules pertaining to the Standard Flood Insurance Policy preclude certain properties or parts of a structure from eligibility for coverage. For example, structures built over water cannot be insured under the Program, nor can boathouses. The NFIP policies also contain restrictions on insurance coverage, such as the portions of finished basements and Post-FIRM elevated buildings where only enumerated and limited coverage is available. A complete and current list of coverages and